

1989

Murray City Corporation, a municipal corporation vs. Thomas L. Huber : Brief of Respondent

Utah Court of Appeals

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L. Long; Attorney for Appellant.

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DOCKET NO. 890611 IN THE UTAH COURT OF APPEALS

MURRAY CITY CORPORATION,
a municipal corporation,

Plaintiff and Respondent,

vs.

THOMAS L. HUBER,

Defendant and Appellant.

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Case No. 89-611-CA

Priority Category 2

ADDENDUM TO THE
BRIEF OF THE RESPONDENT, MURRAY CITY CORPORATION

APPEAL FROM THE DECISION OF THE THIRD CIRCUIT COURT
MURRAY DEPARTMENT, JUDGE L. H. GRIFFITHS
CASE NO. 892001917
ISSUED SEPTEMBER 15, 1989

* * * * *

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FILED

13 1990

Cliff J. Jensen
Clerk of the Court
Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

MURRAY CITY CORPORATION,	:	
a municipal corporation,	:	
	:	Case No. 89-611-CA
Plaintiff and Respondent,	:	
	:	
vs.	:	
	:	
THOMAS L. HUBER,	:	Priority Category 2
	:	
Defendant and Appellant.	:	

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CERTIFICATE OF SERVICE

This is to certify that, pursuant to Rule 26(b) of the Rules of the Utah Court of Appeals, four (4) true and correct copies of the Addendum to the Brief of Respondent were mailed to L. Long, Attorney for Appellant, 39 Exchange Place, Second Floor, Salt Lake City, Utah 84111, this 13th day of March, 1990.


Jean P. Hendrickson
Attorney for Plaintiff-Respondent

CERTIFICATE OF DELIVERY

This is to certify that, pursuant to Rule 26(b) of the Rules of the Utah Court of Appeals, eight (8) true and correct copies of the Addendum to the Brief of Respondent, Murray City Corporation, were delivered to the Clerk of the Utah Court of Appeals, 230 South 500 East, Salt Lake City, Utah 84102, this 13th day of March, 1990.


Jean P. Hendrickson
Attorney for Plaintiff-Respondent

ADDENDUM NO. 1

JEAN P. HENDRICKSON
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IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, MURRAY DEPARTMENT

MURRAY CITY CORPORATION, a municipal corporation,	*	
Plaintiff,	*	STATEMENT OF FACTS IN SUPPORT OF DEFENDANT'S
vs.	*	PLEA OF GUILTY WITH RESERVED RIGHT TO
THOMAS L. HUBER 2789 West Renae Street West Jordan, Utah DOB: 1-4-67	*	APPEAL
Defendant.	*	Case No. 89 200 1917
	*	Judge L. H. Griffiths

TO THE COURT AND COUNSEL FOR DEFENDANT:

The above case came on for a non-jury trial before the Honorable L. H. Griffiths of the Third Circuit Court, Murray Department, September 15, 1989, at 10:00 a.m. At that date and time the court did accept defense counsel's motion to enter a change of plea to guilty to all three charged misdemeanors, viz., Driving under the Influence, Carrying an open container in a vehicle, and Escape from official custody. These pleas were conditioned upon Defendant's reserved right to appeal. The court also accepted Plaintiff's motion that a written statement of facts as to all charges be made a part of the record to assist the court of appeals should that appeal be made. The factual statement as adopted and approved by the court is as follows:

1. On or about March 17, 1989, Officer Mark Lindgren, Murray City Police Department, was on duty.

2. Officer Lindgren's primary duty entails enforcement of alcohol-related ordinances adopted by Murray City in accordance with the Utah Code.

3. At or about 11:44 p.m. Officer Lindgren was in his patrol car and stopped at a red light at the intersection of State Street and Vine Street; at this location his attention was drawn to a blue Chevrolet, facing northbound on State Street, also waiting at the light in the left-only turn lane apparently intending to head westbound. The driver of the vehicle was, in Officer Lindgren's words, "revving" his engine.

4. As Officer Lindgren continued to wait, the arrow light for drivers turning left turned green but the driver of the blue Chevrolet did not turn; the arrow light then turned red and the light for through traffic did change to green; Officer Lindgren's attention was further drawn to the blue Chevrolet as it proceeded to make a left turn from State Street onto Vine Street against a red light for those turning left.

5. Officer Lindgren activated his patrol vehicle's overhead light bar and followed the blue Chevrolet onto Vine Street; Officer Lindgren did pull the vehicle over to the side of the road to initiate contact with the driver.

6. Officer Lindgren approached the vehicle and made contact with the driver; the odor of an alcoholic beverage was detected by the officer upon making this contact.

7. The officer inquired whether the driver had been drinking; the officer recorded in writing the detained driver's pre-arrest statement as "I haven't had that much." At Officer Lindgren's request, a driver's license with a photograph provided identification of the driver as Thomas L. Huber, date of birth 01-04-67.

8. The officer inquired whether the detained driver had any problems with his legs and upon a negative response the officer requested that the driver perform certain field sobriety tests. The tests, first explained and demonstrated by the officer, conducted and the driver's performance are as follows:

- a. Horizontal gaze nystagmus.
- b. One-leg stand: driver put foot down on counts 8, 9, 13, and hopped and slid his foot throughout the test, also the arms were lifted contrary to the directions of the officer.
- c. Heel-to-toe walk: driver put foot out to side to maintain balance three times and crossed his feet one time almost tripping himself.
- d. Finger count: no counting mistakes but driver only performed the sequence twice as opposed to the directions requesting three times through the sequence.
- e. Hand clap: performed very slowly and double clapped verses the alternating single clap as requested.

9. Based upon the driver's performance of the field sobriety tests (Officer Lindgren recorded the observed "errors" of the performance which were contrary to the standard procedure

as trained) and the observable physical characteristics noted by the officer (a moderate to strong odor of an alcoholic beverage, difficulty walking a straight line, and difficulty trying to remove his boots in that he exhibited an inability to find the zipper located on the inside of each boot), Officer Lindgren determined that the driver was too impaired to drive and informed the driver that he was being arrested for driving under the influence.

10. After being handcuffed and frisked, the suspect was placed in the patrol car.

11. After securing the suspect, Officer Lindgren searched the vehicle; an opened fifth bottle of whiskey was found on the floor, passenger side. The evidence was seized and placed into evidence.

12. The suspect was transported to the Murray City Police Department for processing and to conduct a breath-alcohol test on the intoxilyzer machine maintained at that location.

13. The suspect's mouth was checked by Officer Lindgren for any possibly contaminating matter at 11:42 p.m. This action occurred in the field at the time the officer informed the suspect he was under arrest.

14. Officer Lindgren recorded the suspect's name (Thomas Huber), the date (3-17-89), the time (2359), the intoxilyzer machine's serial number (#27-102768), the location of the machine (MCPD), and the operator's (Lindgren) name on the heading of the CMI Intoxilyzer Operational Check List. Officer

Lindgren then performed the required operational steps to secure an accurate reading and noted his performance of the steps by checking the spot beside each step, eight in all. Beside step 6 the calibration setting was recorded (.198). (The machine's proper calibration is .200 +/- .01.) Beside step 7 the breath sample alcohol concentration was recorded (.168).

15. Officer Lindgren recorded the operator's initial (ML), the instrument location (MCPD), the instrument serial number (27-102768), the date (3-17-89), the subject's name (Thomas L. Huber), the time first observed (2342), the time test started (2359), the operator (Lindgren), and additional information (cal .198, breath .168) on the Test Record card upon which the intoxilyzer machine prints and records the air blank cycle reading, the calibration reading, the breath sample reading, and a final air blank cycle reading.

16. Officer Lindgren then informed the suspect, and defendant in this the above-captioned case, Thomas L. Huber that unless a responsible adult could pick him up at the police station he would remain in custody until released from official custody. The Defendant requested use of the restroom. As the holding cell was occupied by a female prisoner, Defendant Huber was escorted down the hall to the men's restroom in the police department which is located on the second floor of the municipal building. The handcuffs were unlocked to permit use of the restroom facilities; Officer Lindgren stood outside the door; approximately two or three minutes passed whereupon Officer

Lindgren heard substantial commotion within the restroom. Upon entering, the observable facts were that the window was ajar and the prisoner was gone.

Defendant Thomas L. Huber was not advised of his rights nor questioned further because he was not still available to the officer.

Officer Lindgren made contact with the Defendant's mother advising her of circumstances and requesting that Thomas Huber return to the police station should he appear at home.

17. At approximately 2:20 a.m. the Defendant did contact Officer Lindgren; the Defendant was transported to the police station by his mother where he did sign a misdemeanor citation promising to appear for arraignment for the three offenses charged.

18. On May 23, 1989, at 9:00 a.m., the above-captioned case came on for hearing of the Defendant's Motion to Suppress before the Honorable L. H. Griffiths.

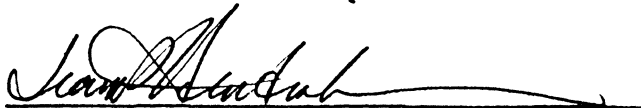
19. The Defendant's theory supporting the motion was that the stop was based merely on pretext. The hearing was had; Officer Lindgren was the only witness questioned at the suppression hearing. On cross-examination, questioning went beyond the facts surrounding only the stop; defense counsel on cross-examination inquired about the field sobriety tests and the intoxilyzer test and results including conformance with the requirements of the Baker Rule. The officer thus testified under cross-examination as to his perception of the Defendant's

impairment during the field tests, the odor of alcohol emanating from the person and the vehicle, the difficulty Defendant had trying to remove his boots, the sequence of checking the Defendant's mouth after handcuffs were placed on him, the recognition of the Baker Rule by the arresting officer, the proper operating procedures of the intoxilyzer being followed, and the results of the test being .16.

20. At the conclusion of the suppression hearing, the court denied the Motion to Suppress and declined to rule on the admissibility of the intoxilyzer results in that the motion before the court did not address that issue nor was direct evidence presented with proper foundation being laid.

WE COME NOW to the conclusion of the statement of facts leading to the arrest of the Defendant and to the request by the court for a statement of the facts to support the Defendant's guilty pleas to the three charges.

DATED this 16 day of October, 1989.

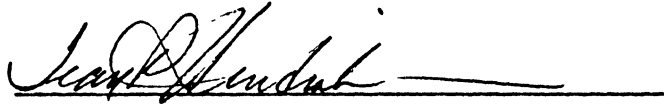

Jean P. Hendricksen
Attorney for Plaintiff

APPROVED AS TO FORM:

Larry N. Long
Attorney for Defendant

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Statement of Facts In Support of Defendant's Plea of Guilty With Reserved Right to Appeal was mailed, postage prepaid, to Larry N. Long, Attorney for Defendant, 39 Exchange Place, Second Floor, Salt Lake City, Utah 84111-2708, this 16 day of October, 1989.

A handwritten signature in cursive script, appearing to read "Sean P. Hendrik", is written over a horizontal line.

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I N F E V

Murray City vs. Thomas L. Huber

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* * *

1 P R O C E E D I N G S

2
3 THE COURT: This is the Third Judicial Circuit
4 Court, the Murray Department. I'm Judge L.H. Griffiths.
5 This is the 23rd day of May, 1989, and time for a motion
6 to suppress in the case of Murray City vs. Thomas L. Huber,
7 89-1917.

8 Is plaintiff ready and prepared to proceed?

9 MS. HENDRICKSON: Yes, your Honor. We're here
10 with our witness.

11 THE COURT: Is the defendant ready, prepared to
12 proceed?

13 MR. LONG: Defendant's ready, your Honor.

14 THE COURT: Okay. I think under the latest
15 decision of the Utah Supreme Court, once a motion to
16 suppress is filed--I assume your motion to dismiss,
17 Mr. Long, is based upon the motion to suppress, isn't it?

18 MR. LONG: Yes. That's correct.

19 THE COURT: So, we'll--under that Supreme Court
20 decision, the City may proceed then. She needs to--you
21 need to call your witnesses on that.

22 MS. HENDRICKSON: The City would like to call
23 Officer Lindgren.

24 ART LINDGREN,
25 called as a witness by and on behalf of the City in this

1 matter, after having been first duly sworn, assumed the
2 witness stand, and was examined and testified as follows:

3 THE COURT: I should say for the record, the
4 record should show that the defendant is present at this
5 time, and he's represented by Mr. Larry Long. Murray City
6 is represented by Jean Hendrickson. Thank you.

7 You may proceed.

8 MS. HENDRICKSON: Thank you.

9 DIRECT EXAMINATION

10 BY MS. HENDRICKSON:

11 Q Would you please state your name and occupation
12 for the record?

13 A Art Lindgren, I'm a police officer for Murray
14 City.

15 Q How long have you been an officer with Murray
16 City?

17 A Be three years in August.

18 Q Were you on duty the night of March 17th, 1989?

19 A Yes.

20 Q What was your capacity during that duty shift?

21 A I'm an alcohol enforcement officer.

22 Q What time is that shift, normally run?

23 A From 6:00 p.m. in the afternoon until 4:00 a.m.

24 Q During that shift, do you handle any other kinds
25 of situations, besides the alcohol enforcement?

1 A Only when we're busy, then they'll dispatch the
2 alcohol cars to handle details and back--backing up other
3 units.

4 Q When you were on duty that night, the 17th, was
5 your attention drawn to a blue Chevrolet?

6 A Yes. It was.

7 Q And about what location did you notice--did
8 you have your attention drawn to that vehicle?

9 A That would be on Vine and State.

10 Q Do you see the driver of that vehicle here in
11 the courtroom this morning?

12 A Yes. I do.

13 Q Would you indicate who it is?

14 A It's the defendant sitting at the table over
15 here.

16 MS. HENDRICKSON: Let the record show that the
17 officer indicated Mr. Thomas Huber, seated at the defense
18 table.

19 THE COURT: Record may so show.

20 Q (By Ms. Hendrickson) When you noticed that
21 vehicle, what drew your attention to it?

22 A The car was in the left-turn lane, facing--

23 Q Which direction was it--

24 A --facing north.

25 Q It was heading--

1 A Right.

2 Q Okay.

3 A On Vine and State. It was revving up its

4 engine.

5 Q What were--is that a stop light intersection?

6 A Yes. It is.

7 Q What kind of a stop light series is at that

8 intersection?

9 A It has green arrows for the left-turn lanes,

10 both north and south, and also for through traffic, and--

11 Q Okay. And he was situated where?

12 A To make a left turn on to Vine Street to head

13 westbound.

14 Q Okay. As you watched the vehicle, would you

15 describe the events you saw that night?

16 A The vehicle--I was also stopped at a red light,

17 along with the Chev. I noticed that--or head him revving

18 up his engine, I looked over. The light had turned green,

19 but the vehicle did not go. When the light turned red,

20 at that time, the vehicle did make a left turn on the red

21 light.

22 Q And what was your response to that?

23 A I pulled the vehicle over--

24 Q Okay.

25 A --for making a left turn on a red.

1 Q Where did you pull him over?
2 A I believe it's in the area of about 35 East
3 Vine, or--
4 Q Just past the intersection--
5 A Right.
6 Q --that you'd gone through?
7 Did you have a clear view of the car while you
8 were at that stop sign--
9 A Yes.
10 Q --at that stop light?
11 When you approached the vehicle, was the driver
12 still seated?
13 A Yes.
14 Q Okay. And what did you do when you approached
15 the vehicle?
16 A I informed him of the reason for the stop.
17 Q What did you tell him?
18 A Well, for running the--going through the red
19 light.
20 Q Okay. And what,--in your experience, is this
21 something that you would normally do?
22 A Yes. When it was as blatant as that was, I
23 always will pull over a car.
24 Q Okay. Regardless of whether there's alcohol
25 enforcement as your primary--

1 A Correct.

2 Q --duty?

3 A Right.

4 Q Okay. You are also watching for vehicle

5 infractions, driving infractions; is that also part of

6 your position as an alcohol enforcement officer?

7 A Yes. It is.

8 Q Okay. As your experience with the Department,

9 would your action have been followed by other officers,

10 seated there in their vehicle watching that kind of

11 vehicle maneuver, from your experience and talking with

12 other officers?

13 A I believe so, yes.

14 Q When you pulled the person over and approached

15 him, what did you notice, when you talked with him?

16 A I noticed the strong odor of an alcoholic

17 beverage coming from the car and himself.

18 Q From the--

19 A The driver, I'm sorry.

20 Q Okay. Did you notice anything--any other

21 physical characteristics about the defendant?

22 A While he was sitting in the car, not at that

23 time, no.

24 Q Okay. What kinds of things are you trained in

25 your position as alcohol enforcement to look for to perform

1 your specific duties of alcohol enforcement?

2 A In driving patterns or--

3 Q Anything that you have to do in your investigation
4 stage.

5 A Well, we always look for the driving pattern,
6 first, you know, cars driving without headlights or with
7 their bright lights on or weaving in the lanes. Odor of
8 alcohol, their mannerisms, their--you know, when you pull
9 them over, the physical characteristics.

10 Q Okay. Did--when you spoke with the defendant,
11 Mr. Huber, did you notice anything else, besides the odor
12 of alcohol?

13 A On Mr. Huber?

14 Q Uh huh (affirmative).

15 A While he was still in the car, or when he got
16 out?

17 Q While he's still in the car?

18 A I don't believe so.

19 Q Okay. When he got out of the car, was that at
20 your request?

21 A Yes. It was.

22 Q Okay. Had you asked him for identification or a
23 vehicle registration at that point?

24 A Yes.

25 Q Was he still in the car, or outside the car?

1 A I ask for it when they're in the car.

2 Q Okay. And how did he produce that?

3 A I don't recall any problems.

4 Q Okay. Once he was outside the vehicle, at your
5 request, what did you then do?

6 A I had Mr. Huber perform some field sobriety
7 tests for me.

8 Q How do you initiate that request to someone
9 that you've stopped?

10 A Well, I explained to him that since he had been
11 drinking, I could smell alcohol, that I would perform some
12 field sobriety tests, and if I felt he was not impaired,
13 he would be released to go on his way. If he's--if I felt
14 he was too impaired, then he'd be placed under arrest.

15 Q And how did he respond to your request?

16 A He performed the tests for me.

17 Q Okay. Was there any indication given that he
18 was not wishing to comply with your request, any behavior?

19 A At that time, no.

20 Q Okay. Any comments that he made?

21 A No.

22 Q Okay.

23 A He did make a comment that he had been drinking,
24 I believe, on my pre-arrest statements when I asked, I did
25 ask him.

1 Q Okay. When you cite somebody for a driving
2 under the influence charge, what do you normally do on
3 the traffic violation that you have stopped someone for
4 originally?

5 A We don't issue a citation for that, if it's a
6 moving violation, we don't, we just dismiss that for being
7 the probable cause for pulling the vehicle over.

8 Q Okay. Is that what you did in this case?

9 A Yes.

10 Q Okay. How many officer vehicles were at the
11 scene of the stop? Were you alone?

12 A Well, originally just mine. I did receive another
13 back-up unit a short time later.

14 Q Was that because you called for one, or is that
15 just normal procedure?

16 A It's--for night time, that's normal.

17 Q Okay. Was the response then initiated at your
18 request, your call in to the department?

19 A To have an officer there?

20 Q Uh huh (affirmative).

21 A No.

22 Q Okay.

23 A Not at that time.

24 Q What was the--when the other officer responded,
25 what duties was that officer there to perform?

1 A Well, just to make sure that if there's any
2 problem, that he's there to assist, and also if the
3 driver is placed under arrest, he would be doing the
4 impound for me.

5 Q Okay.

6 MS. HENDRICKSON: I have no further questions
7 at this point.

8 THE COURT: You may cross.

9 MR. LONG: Would your Honor mind if I use the
10 podium?

11 THE COURT: You may use the podium. Just--it's
12 easier to pull than it is to push.

13 MR. LONG: Thanks for the warning.

14 THE COURT: Yeah. It's so heavy that--

15 CROSS-EXAMINATION

16 BY MR. LONG:

17 Q Officer Lindgren, is it Mark Lindgren?

18 A Art.

19 Q Did this happen on the 17th of March or the 19th
20 of March?

21 A I believe it would be the 19th.

22 Q Okay. And this was--you were apparently right
23 behind the defendant's vehicle?

24 A No. I was off to the right--

25 Q Off to the right.

1 A --of the car.

2 Q Were you, like--

3 A I was going to go straight.

4 Q You were going to go straight?

5 A Right.

6 Q Oh. I see. So, you were side-by-side, then?

7 A I believe I was in the middle lane, so I was

8 over, I believe, a lane.

9 Q Was there anybody between you and--

10 A I don't believe there was.

11 Q So, you were the only two at the stop light?

12 A The best that I recollect, that--I believe

13 that's true.

14 Q Could you tell if the defendant was aware that

15 you were there?

16 A I have no idea if he knew I was there or not.

17 Q Did you meet eye contact with the defendant?

18 A No. He had another passenger in the car, also.

19 Q There was?

20 A I believe there was, yes.

21 Q Did you meet eye contact with the passenger?

22 A Not that I recall.

23 Q Uh huh (affirmative). You were in a marked

24 vehicle, though?

25 A Yes.

1 Q Uh huh (affirmative). No other cars on the
2 road?

3 A Well, yeah. I--exactly where they are, I don't--
4 you know, there are other cars on the road, but not with us,
5 I don't believe, at that time, no.

6 Q Pretty light traffic, then?

7 A Right at that moment, it was fairly light.

8 Q Uh huh (affirmative). Okay. So, you say you
9 could tell he was having trouble with the car, gunning it
10 and trying to--

11 A I--he was revving up his engine as it appeared
12 he may have been having problems with his car. I'm not--
13 I don't know exactly if he was or not.

14 Q Uh huh (affirmative). And when the light
15 turned green for him, the left-hand turn arrow, did the
16 car kinda jerk forward, and then stall?

17 A Not that I recall, no.

18 Q Did you--were you able to ascertain whether he
19 had a standard transmission or an automatic?

20 A No.

21 Q Couldn't tell if he let out on the clutch too
22 abruptly and it jerked to a stop?

23 A No.

24 Q But apparently, he was having trouble with it
25 before the light even turned green for him?

1 A That could have been the case, yes.

2 Q Did that draw your attention to the vehicle?

3 A It drew my attention over there, right.

4 Q Uh huh (affirmative). And so how long a period
5 of time is that arrow green?

6 A I would assume it varies, depending on how many
7 cars are behind it, if it keeps triggering the mechanism
8 on the ground, I guess it could stay green for awhile. If
9 there's only one car, it wouldn't stay green for very long.

10 Q And there was only one car this time, wasn't
11 there?

12 A Yes.

13 Q So, it was green only for a few seconds, then?

14 A I don't know how many seconds. No idea.

15 Q But it's a very--

16 A Not very long. I would assume not very long.

17 Q Uh huh (affirmative). So, after he finally got
18 the engine started, then he just completed the turn?

19 A Well, I don't recall it ever dying, but when the
20 light turned red--he never did go out to the intersection,
21 if that's what you're saying. He was still in the turn
22 lane.

23 Q In the left-hand turn lane?

24 A Right.

25 Q Uh huh (affirmative). So when he did make the

1 left turn across the lane, did he interfere with any of
2 the other traffic?

3 A No.

4 Q There wasn't any other cars coming, or--

5 A None that had to brake for him, no.

6 Q Okay. So, you say that when it is blatant, when
7 it is as blatant as that is when you pull somebody over?

8 A Right.

9 Q But later, you said that part of the policy of
10 the department is that you pull people over for these
11 violations, but you never give them a ticket for it?

12 A Not if there's a DUI involved with it, I don't.

13 Q All right. So, in other words, if someone is,
14 say, weaving, and you pull them over and check their license,
15 ascertain they haven't been drinking, you let them go with
16 a warning, you don't give them a ticket for that weaving?

17 A No. I don't.

18 Q So, in other words, does stopping vehicles for
19 weaving, having your headlights out, turning left at a red
20 light--

21 A Well, no, I don't--it all depends on how blatant
22 the violation is. Not every car that I pull over that I
23 think may be--the driver may be impaired, I don't always
24 let go if they're not, you know, it all depends on what he
25 did. I still write citations, I mean if somebody went

1 through a red light and they hadn't been drinking, I'm not
2 going to let them go 'cause they hadn't been drinking.
3 He'll be issued a citation.

4 Q Even if there were no other cars on the road?

5 A Right. Well, not--I can't say I do this every
6 time, I mean, I don't cite everybody I pull over, no.

7 Q Uh huh (affirmative).

8 A Sometimes I let them go with a warning, sometimes
9 I cite them.

10 Q And it depends basically on how--what--your mood
11 at the time?

12 A Their attitude, the mood, how dangerous the
13 violation was.

14 Q And you didn't consider this to be a dangerous
15 violation, did you?

16 A If there was no other traffic immediately coming
17 south for them to have to stop, no, it wasn't--wasn't
18 dangerous in the sense that there's cars approaching him.
19 I mean, they were further back.

20 Q Uh huh (affirmative). And so that's why no
21 citation was given for the light?

22 A No. No citation was given because I approached
23 the vehicle and gave him--could smell alcohol and gave him
24 tests, and he was too impaired to be driving, he was
25 placed under arrest for DUI.

1 Q Right. So, you--when you were asked on direct
2 examination, you said that you smelled the strong odor of
3 alcohol and from inside and then you later said, oh, from
4 the defendant, I'm sorry; what exactly did you mean when
5 you said that?

6 A I don't recall saying oh. I'm sorry, from the
7 defendant. I said from the defendant and from inside the
8 vehicle.

9 Q Now, in your police report, you did fill out a
10 DUI report form, did you not?

11 A Yes.

12 Q And on that report, you wrote down under Roman
13 Numeral VII, physical characteristics, odor of alcoholic
14 beverage, moderate to strong. And now, you're testifying
15 today that it was strong; is that right?

16 A If--yeah.

17 Q And in your physical characteristics, Roman
18 Numeral VII, you didn't put down where the odor was
19 emanating from, the vehicle or the person, but now it's
20 your testimony that it would be emanating from both the
21 vehicle and the defendant.

22 A Well, when he stepped out of his car, it was
23 still there, it was coming from him, and just not the
24 vehicle.

25 Q But when he was in the car, you couldn't really

1 tell if it was coming from him or just inside the vehicle?

2 A I could detect an alcoholic beverage, yes, from--

3 Q But you couldn't tell whether it was coming
4 from him or the vehicle?

5 A Not until later.

6 Q Right. And so while he was still sitting in his
7 car, the only clue you had that he had been drinking was
8 the odor of an alcoholic beverage emanating from somewhere
9 inside the vehicle; is that correct?

10 A That's right.

11 Q Okay. Now, you said he had no trouble getting
12 his license out, or registration?

13 A No.

14 Q And when he got out of the vehicle, that's the
15 point at which you then smelled the odor coming from his
16 person, when he got out?

17 A At some point after he got out, I did, yes.

18 Q At some point. And that's when you asked him to
19 submit to the field sobriety tests?

20 A Well, I believe I also asked him if he had been
21 drinking and which he told me he had.

22 Q Uh huh (affirmative). And that was one of the--
23 you said, the pre-arrest statements?

24 A Right.

25 Q He said he'd been drinking. Could you tell what

1 kind of an alcoholic beverage you smelled?

2 A No.

3 Q Do you drink?

4 A I have, in the past, yes.

5 Q And so you couldn't tell the difference between
6 beer and Vodka, say?

7 A That's pretty--it's difficult after they've been
8 drinking. They pretty much all smell alike unless it's a
9 Bourbon or something, and then there might be another smell
10 to it, but no, I'd say it's pretty tough to distinguish
11 exactly what kind of alcohol is in their system or what
12 they've been drinking.

13 Q Well, when he was sitting in the car, was the
14 odor of the alcoholic beverage emanating from the vehicle,
15 was it moderate or strong?

16 A While he was in the car?

17 Q Uh huh (affirmative).

18 A It was--it was pretty strong.

19 Q And so then when he got out of the car, what
20 would be the odor of the alcoholic beverage from his
21 person? How was that?

22 A Well, you're not inside an enclosed area anymore.
23 It was, you know, diminished, it wasn't as strong as when
24 he was sitting in the car.

25 Q Uh huh (affirmative). And there was a passenger

1 with him, was there not?

2 A Yes.

3 Q And were you able to ascertain who that
4 passenger was?

5 A I didn't get his information, no.

6 Q Uh huh (affirmative). Now, you also wrote down
7 in--there's another person named Michael Anthony, is that
8 somebody who was a witness to this?

9 A A Michael Anthony?

10 Q Uh huh (affirmative).

11 A I don't have my report form. I don't--I
12 figured we were just going to go through the traffic stop
13 so I didn't have--I really didn't look through it. If
14 Michael Anthony's in there, it may be the passenger, I
15 don't know. I just--

16 Q There was no one with you, no other officer?

17 A No.

18 Q No other officer came as a back-up?

19 A Yes. There was one.

20 Q Do you know when he arrived?

21 A After, I believe he arrived after I started
22 performing the tests on the driver.

23 Q Could you tell me who that was?

24 A Like I said, I didn't go through the report form.
25 I figured we were just going to go through the traffic stop,

1 so I don't recall, without going through my report.

2 Q You have no independent recollection of who the
3 officer was?

4 A Not that night with that DUI, no. I'd have to
5 go through my report to find out who it was.

6 Q And you don't remember when he arrived?

7 A I said some time during the tests, I don't know
8 exactly the time.

9 Q Do you know if he was a witness to some of the
10 tests?

11 A I believe he was.

12 Q Do you know if he filed a supplemental report?

13 A No.

14 Q Do you know if he took any notes as to the field
15 sobriety tests?

16 A No.

17 Q Okay. So, in Chapter--or Chapter 7. In Paragraph
18 Roman Numeral VII at the bottom of your DUI report form
19 under physical characteristics, you wrote down under speech,
20 no problems?

21 A That's right.

22 Q And then you wrote down, and I presume that the
23 odor of the alcoholic beverage and the speech were written
24 down at some later time, such as--I guess you started
25 filling this out at five minutes to midnight?

1 A If that's what it says on the report, yes.

2 Q And you finished filling it out at 1:30; is that
3 correct?

4 A Right.

5 Q The next morning? Okay. And so then after he
6 did get out of the car, you wrote that he had a little
7 difficulty walking a straight line?

8 A Right.

9 Q Is that right? And were there any signs or
10 complaints of injury or illness?

11 A No.

12 Q Were there any other physical characteristics you
13 can remember?

14 A Not that comes offhand. Like I said, I really
15 didn't go in to my report, because I figured we were just
16 going to be stopping about the stop and not the entire DUI.

17 Q But you have no independent recollection of any
18 other physical characteristics?

19 A He had a hard time getting his boots off. I don't
20 know if that's physical or what. As to bloodshot eyes, like
21 I said, I didn't go through the report, so I don't recall
22 if I wrote that in or not.

23 Q Okay. Is it--could you tell us about the
24 horizontal gaze Nystagmus test you did on the defendant?

25 A Tell you about it?

1 Q I mean, could you describe--did you do one,
2 first?
3 A Yes.
4 Q And do you remember how you conducted the test?
5 A Yes.
6 Q How did you do it?
7 A I held a flashlight below the subject's face,
8 not too much--to put too much of a glare on him, just
9 enough so that I could see, and then moved a pen in front
10 of their eyes about a foot or so, and tell them to keep
11 their head straight and to follow the pen with their eyes
12 only.
13 Q Uh huh (affirmative). And this was done while
14 he was standing outside of his vehicle?
15 A Right.
16 Q Okay. And do you remember how he performed on
17 those tests--on that test?
18 A Yes. He had both unsmooth pursuit of the pen,
19 which is one of the things we're looking for in people who
20 have been drinking, and also, when the eyes are out at the
21 maximum deviation, or as far as they can go, he--his eyes
22 were jerking, or had good Nystagmus there.
23 Q Uh huh (affirmative). And is that all you can
24 recall about it, then?
25 A Yes.

1 Q Since this was late at night, did you take into
2 consideration anything in terms of it being late at night?

3 A What--I don't understand what you're saying.

4 Q Did you adjust it in terms of the fact that it
5 was late at night?

6 A Adjust what?

7 Q Any of the way you view the test, in terms of, say,
8 the number of degrees at which the--

9 A No, you don't adjust the test for day or night.

10 Q So, you don't make any adjustments for--

11 A There is no adjustments to make. You move the
12 pen, you know, and see how they follow it. I mean,
13 there's nothing to adjust.

14 Q But in--where you did your training, they didn't
15 tell you that fatigue, muscle fatigue on the eyes has
16 something to do with gaze Nystagmus?

17 A No.

18 Q They didn't? So, you didn't make any adjustments?

19 A No.

20 Q And do you remember what other field sobriety
21 tests you did for the defendant?

22 A I gave the heel-to-toe, and the one-leg stand.

23 Q Could you tell us how he did on the heel-to-toe?

24 A If I could look at my notes, I can tell you.

25 They're at the desk. Like I said, I didn't expect to be

1 going through the entire DUI part of it.

2 Q But you have no independent recollection of how
3 he did on that?

4 A I do so many, I don't recall without going
5 through the notes.

6 Q And the same with the one-leg stand?

7 A No.

8 Q You do remember how he did on that?

9 A I know he used--he put his foot down, but I
10 don't recall how many times, or exactly what he--how he
11 did on that, no.

12 Q Was he still wearing his boots at the time?

13 A No. He took his boots off.

14 Q So, he was barefooted?

15 A Right.

16 Q And where was the test conducted?

17 A In a parking lot.

18 Q And was there gravel, or anything like that?

19 A Nothing that was--it was pretty smooth.

20 Q Concrete or asphalt?

21 A It was asphalt.

22 Q Can you tell me where the parking lot is?

23 A It's in the business around 35 East Vine.

24 Q Which side of the road would it be on?

25 A It would be the north side.

1 Q You don't remember the business, though, that
2 was there?

3 A No. I don't remember the business.

4 Q Do you remember any other field sobriety tests?

5 A I believe I gave him also the hand-slap.

6 Q Do you remember how he performed on that?

7 A Yes. I believe I put down that he had double
8 pats, and then he slowed down and did a little better, I
9 believe is what I wrote down on that one.

10 Q And how about the finger-count? Did you do that
11 test?

12 A I don't recall if I gave that one or not.

13 Q So, you don't know how he performed on the
14 finger-count test?

15 A If I gave it to him, I don't recall, no.

16 Q Could you tell us how his ability was to follow
17 the instructions?

18 A I don't believe he had any problems following
19 the instructions, no.

20 Q Okay. And you searched his person, did you?

21 A At the police station--oh, yeah. No, it was
22 there, I believe I searched him, yes, I did.

23 Q And you searched him, yourself?

24 A Right.

25 Q And what did the back-up officer do?

1 A The impound.

2 Q All right. So, he was busy impounding the vehicle
3 while you were searching the person of the defendant, or
4 do you remember the sequence of events?

5 A I, after I arrested him, I looked through the car
6 real quick and then searched him.

7 Q And did you then take him to jail?

8 A Took him to the police station.

9 Q Uh huh (affirmative). And when you took him to
10 the police station, what happened there?

11 A I read him the first admonition, first, I checked
12 inside his mouth after I cuffed him, then I took him to the
13 police station, then I read him the first admonition as to
14 whether or not he'd take a breath test.

15 Q And so, let's see, you say you cuffed him and
16 then you checked in his mouth, is that the way?

17 A Right.

18 Q And did you search his person before you
19 handcuffed him, I presume, or did you handcuff him--

20 A No. I cuffed him first, and then I searched
21 him.

22 Q So, you then handcuff and then you search him
23 and then you look in his mouth and then you put him in the
24 police car?

25 A No. I cuffed him, then I looked in his mouth.

1 Q Oh. Okay. So, you looked in his mouth, last?
2 A Looked in his mouth first, and then I searched
3 him. I cuffed him, looked in his mouth and then I searched
4 him.
5 Q I see. And then when you took him to the police
6 station, what happened there?
7 A I read him this first admonition as to whether
8 or not he'd take the breath test.
9 Q And what was his response?
10 A Oh, he said he would take it.
11 Q And did you then conduct the test?
12 A Yes.
13 Q And did you have any difficulties with the test?
14 A No.
15 Q And did you have occasion to make a printout of
16 the test results?
17 A Yes.
18 Q And what were those?
19 A I believe it was a .16, or somewhere in that
20 area.
21 Q And did you calibrate the machine before you
22 ran the test?
23 A Yes.
24 Q And did you make a checklist of the things you
25 followed when you ran the breathalyzer, or the intoxilyzer?

1 A Yes. I did.

2 Q And did you keep a copy of it?

3 A Yes.

4 Q And do you have a copy of it?

5 A Yes.

6 Q May I see it?

7 A It's on the desk.

8 Q So, there was no difficulties with the machine,
9 itself; is that correct?

10 A No. No difficulties, no.

11 Q And you did follow the Baker rule?

12 A Yes.

13 Q And how many minutes did you wait after you
14 looked in his mouth before you did the test?

15 A I always wait at least 16 to 17. I don't know
16 exactly how many minutes I waited on this one, without
17 looking.

18 Q Is the Baker rule 15 minutes?

19 A Yes. It is.

20 MR. LONG: Okay. I don't believe I have any
21 further questions, your Honor.

22 THE COURT: Thank you.

23 Your motion to suppress is based upon the fact
24 that you felt that there was not probable cause to make the
25 stop; is that right?

1 MR. LONG: Well, I have--there are two basic
2 arguments, your Honor, I've kind of developed since
3 Judge Billings wrote the decision in the Sierra case last
4 May and then reaffirmed it in February 15th with the
5 Auroro case, and then there's another case that just came
6 out last week from the Supreme Court, where Judge Stewart
7 wrote the majority opinion and two of the other judges
8 agreed with him, and Justice Hall and one of the other
9 justices disagreed, but I think it's very enlightening in
10 terms of the situation where--that we're looking at here
11 today.

12 THE COURT: Is there any more testimony you want
13 from this witness?

14 MS. HLNDRICKSON: Perhaps just to clarify a couple
15 of the question areas that were covered on cross-
16 examination.

17 THE COURT: You may redirect.

18 MS. HENDRICKSON: Thank you, your Honor.

19 REDIRECT EXAMINATION

20 BY MS. HENDRICKSON:

21 Q Officer Lindgren, at the outset of your cross-
22 examination testimony, there was some discussion of the
23 actual date of the offense. I had asked you if you'd been
24 on duty the night of the 17th of March, and whether your
25 attention had been drawn to this blue Chevrolet, you said

1 yes. When you were asked on cross-examination, the dates
2 of the 19th and 20th were brought up. As I have looked at
3 every report form that you signed, I see the 17th--

4 MR. LONG: Your Honor, I think that's a leading
5 question, and it's been asked and answered.

6 THE COURT: Sustained.

7 Q (By Ms. Hendrickson) Do you recall the date of
8 the offense that you wrote on your report was the 17th?

9 A Do I recall if it was the 17th?

10 Q Yes.

11 A Like, I thought you told--I thought you said it
12 was the 19th. That's why I said yes. Like I said--

13 Q Perhaps I just mispronounced, but it was the
14 17th that I asked you.

15 MR. LONG: A leading question, your Honor.

16 MS. HENDRICKSON: Excuse me.

17 THE COURT: Sustained.

18 MS. HENDRICKSON: We'll withdraw the question.

19 Q (By Ms. Hendrickson) You stated on the night in
20 question when you stopped this defendant, you were at a
21 traffic light and the traffic was light. Now, based upon
22 that, is there any regulation or law that you can think of
23 that would permit a turn on a red light, that would be
24 appropriate under those circumstances?

25 A No.

1 Q When you heard the engine being revved, you
2 didn't, at any time, notice the car come to a stop or the
3 engine stop, or stall?

4 A No, I don't recall it ever stopping.

5 Q Okay. What ultimately drew your attention to the
6 vehicle, besides the revving engine, that caught your
7 attention at first? What ultimately--

8 MR. LONG: Asked and answered, your Honor.

9 THE COURT: Sustained.

10 Q (By Ms. Hendrickson) In your training as an
11 alcohol enforcement officer, what have you been instructed
12 to do or consider when you smell the odor of alcohol
13 emanating from a vehicle, where there is a person still
14 seated there, in the vehicle?

15 A What are my instructions to do?

16 Q What do you do? What have you been trained to do?

17 A What I do, I usually ask them if they have been
18 drinking, and after that, I ask them to step out of the
19 car to perform some field tests for me.

20 Q Has your training taught you that there's some
21 distinction as to whether the odor's coming from the
22 vehicle or from the person at the initial investigatory
23 stop?

24 A There's some--I'm sorry. Say that once more.

25 Q When the person is first stopped and seated still

1 in their vehicle, at the investigation stage, are you
2 particularly concerned at that time whether the odor of
3 alcohol is coming from the person or from the vehicle?

4 A I will still bring them out and do the tests,
5 whether it's coming from the car or the person.

6 Q And why is that that you would do that?

7 A I very seldom get an honest answer as to whether
8 they've been drinking, and just to make sure that they
9 hadn't been or if they're capable of driving.

10 Q Okay. All of these occurrences that you've
11 stated, they occurred while you were on duty in Murray;
12 is that correct?

13 A Right.

14 Q Okay.

15 MS. HENDRICKSON: I have no further questions.

16 THE COURT: Any further cross?

17 MR. LONG: No further recross, your Honor.

18 THE COURT: You may step down, Officer. Thank you.
19 City have any other witnesses?

20 MS. HENDRICKSON: No, your Honor.

21 THE COURT: Okay. Do you have any argument,
22 Mr. Long?

23 MR. LONG: If your Honor doesn't mind, I think
24 it's kind of enlightening, it seems like the law is so dull
25 and it seems to be kind of perking up here, if you don't

1 mind, I'd like to say a few words about my--what I think
2 the trend in the law has been. Do you mind?

3 THE COURT: You may proceed.

4 MR. LONG: Well, I, to be quite honest, when I
5 read the Sierra case last year, I thought it was just a
6 flash in the pan and I thought the Supreme Court was going
7 to end up saying, that's too bad, but Judge Billings
8 reaffirmed this opinion in May 15th--or on February 15th,
9 this year, with the Auroro case, which rather surprised me.
10 And then last week, we had this case come down, which I
11 heard about on the radio and went up to the Supreme Court
12 Law Library and picked up a copy, which I got this morning.
13 The State of Utah vs. Schollser and Lowder, I don't know
14 if your Honor is familiar with it, it was entered on
15 May 17th, and it was written by Justice Stewart, Steve
16 McCaughey and Loni DeLand were the two attorneys for the
17 defense, and I thought I might just run through the facts
18 because they're so--so close to this case that I think it's
19 very, very enlightening.

20 Officer Howard of the Utah Highway Patrol clocked
21 a pickup truck traveling 42 miles per hour in a 30-mile-
22 per-hour zone in Nephi, Utah, and signaled the vehicle to
23 pull over. As the vehicles were pulling over, Officer
24 Howard observed defendant Schollser, a passenger in the
25 vehicle, bending forward, acting fidgety, turning to the

1 left and to the right and turning back to look at the
2 officer.

3 After stopping the vehicle, the driver, defendant
4 Lowder, got out of the truck and met Officer Howard between
5 the truck and the patrol car, with a valid driver's
6 license and vehicle registration, ready to show the
7 officer. Very similar to testimony as to what Mr. Huber
8 did.

9 Schollser continued to move about in the cab of
10 the truck. Defendant's behavior led the officer to
11 conclude that Schollser was trying to hide something.
12 Officer Howard approached the passenger side of the
13 vehicle, tapped on the closed window, immediately opened
14 the passenger door and asked Schollser for identification.
15 Officer Howard testified that he asked for identification
16 as a pretext for trying to determine what Schollser may
17 have been hiding.

18 Upon opening the door, Officer Howard scanned the
19 interior of the truck for contraband and saw a baggie of
20 marijuana in the passenger door pocket, which apparently
21 was in plain sight. He also smelled marijuana smoke.

22 The defendants were arrested, and in a subsequent
23 search of the vehicle, additional bags of marijuana, drugs,
24 et cetera, and two unloaded firearms were also found.
25 They were charged with unlawful possession of controlled

1 substance.

2 Now, on defendant's motion, the trial court,
3 which is Judge Harding who is a very conservative judge,
4 granted the motion of the defendant to suppress all of the
5 evidence seized.

6 In ruling on the motion, the trial court found
7 that Officer Howard acted on a mere suspicion that the
8 defendant, Schollser was engaged in criminal activity, had
9 no legal basis for the search and seizure, and ordered the
10 evidence taken from the automobile suppressed.

11 This is, you know, really quite fresh off the
12 press, and it was a three-to-two decision, but we are,
13 hopefully, bound by the precedents, which are set by our
14 Supreme Court, and this--

15 THE COURT: That's referring to the passenger,
16 though, isn't it?

17 MR. LONG: Well, but I think it's indicative of
18 the fact that he smelled marijuana smoke, saw a bag of
19 marijuana in plain view in the car, or--

20 THE COURT: But the initial stop wasn't anything
21 to do, other than speeding.

22 MR. LONG: Right.

23 THE COURT: Yeah.

24 MR. LONG: Right.

25 THE COURT: And the only thing that drew the

1 attention of the officer to the passenger was his wiggling
2 around.

3 MR. LONG: Well, that's true, but I mean just the
4 fact that he smelled marijuana smoke and saw a bag in plain
5 sight, of marijuana.

6 THE COURT: But after the wiggling around, was
7 after he--the only reason he approached the car in the
8 first place is 'cause the--was the action of the passenger
9 in the car, not anything obvious as far as a violation to
10 the officer.

11 MR. LONG: Right. And in this case, we have even
12 less of a reason for the officer--the officer testified that
13 even if he smells the odor of alcohol emanating from the
14 vehicle, he still has the defendant get out and perform
15 field sobriety tests.

16 THE COURT: So, are you saying that there was a
17 legitimate stop because he run a red light?

18 MR. LONG: Well, I'm saying that his testimony
19 was that it's departmental policy to look for people who
20 are making minor traffic violations; weaving on the road,
21 driving with their headlights off, turning left at a
22 red light, and after they stop them, if it's not dangerous
23 and in his somewhat arbitrary decision, he decides it wasn't
24 a blatant violation, he just lets them go. But if he
25 smells the odor of alcohol coming from the vehicle, not the

1 person, he has them get out, makes them do field sobriety
2 tests.

3 Now, I think that is the pretext that the Supreme
4 Court and the Court of Appeals is getting at. That's the
5 very thing. I mean, if he says, well, he blatantly made a
6 left-hand turn at a red light and I had to pull him over to
7 give him a ticket, and here's the ticket for turning at a
8 red light, and incident to that, I also discovered that I
9 smelled the odor of alcohol coming from his breath and I
10 then, you know, went through the other routine, I could see
11 it; but as a departmental policy, they have now to pull
12 people over for weaving, for doing other minor traffic
13 violations, with no intention of giving them a ticket for
14 the violation, but just to ascertain whether they've been
15 drinking.

16 And as I say, it's impossible, really, to read
17 the minds of the Supreme Court Justices and the Court of
18 Appeals Justices, but I do think that the trend has been,
19 and I'm quite surprised, myself, as of last week, that the
20 trend has been to try to stop what they consider to be
21 pretext stops, and pretext searches of people incident to
22 these stops for minor traffic violations for which they
23 have no intention of giving them a ticket.

24 I think his testimony, you know, as we went through
25 some of his testimony there, he was--he said, first, it

1 was a strong odor of alcohol, then we found out it was
2 coming from the vehicle. On his report, he wrote down
3 later, it was moderate to strong, and he didn't mention
4 where it came from. There was no problems with his speech,
5 he wrote it on the report. So, before he got out of the
6 vehicle, the only hint he had that the guy had been
7 drinking was the odor of alcohol emanating from within the
8 vehicle, that's it, other than perhaps the pre-arrest
9 statement he may have made, which we don't know what time
10 he made it, that he had been drinking, we don't know when
11 that statement was made. But I just don't see that that's
12 really probable cause to give someone field sobriety tests
13 when that's all you've got to go on, unless, as he
14 mentioned earlier, he is on alcohol enforcement, that's
15 the name of his shift, that's his job is to go out and
16 arrest people for violating alcohol ordinances, and they're
17 just using the weaving and no headlights and that sort of
18 thing as a pretext to pull people over to check them out,
19 see if they've been drinking.

20 If they smell the odor of alcohol coming from the
21 vehicle and not the person, they make them get out of the
22 car and do the field sobriety tests.

23 In terms of the Baker rule, I would point out
24 that in the DUI report form, the vehicle was--or the
25 person was searched at 45 minutes, at 2345, quarter to

1 midnight and the test was run at one minute to midnight,
2 that's only 14 minutes, so I'd say the Baker rule was
3 violated, and the intoxilyzer results should be suppressed
4 due to that.

5 THE COURT: Do you wish to respond?

6 MS. HENDRICKSON: Yes, your Honor.

7 We don't object to the defense counsel
8 referencing State vs. Sierra. That case indicated that a
9 minor violation, a mere hunch is not to be the basis for
10 something that's inappropriate.

11 We heard testimony from Officer Lindgren that it
12 was not a mere hunch. He was stopping the vehicle which
13 had run a red light. He testified that his training
14 indicates that he does have discretion to make stops, but
15 seeing a clear violation of running a red light is
16 something that he and other reasonable officers would
17 follow up on.

18 Based upon initially having a good reason to
19 stop someone, he then indicated, no, I don't write traffic
20 citations when, what I find, based on the probable cause
21 of the stop for the traffic violation, I then find that
22 there is obvious indication that there may be alcohol
23 involved, and he indicated that that was the case, when
24 the person had a strong odor of alcohol about him, plus he
25 said he had been drinking, in the pre-arrest statements.

1 So, he indicated that based on the totality of
2 the circumstance assessment, that the traffic stop was
3 just something that he would have done anyway, but when he
4 was faced with the evidence of strong odor of alcohol, he
5 could not ignore that because that is his training as an
6 alcohol enforcement officer.

7 I don't believe that what we've had the officer
8 describe is a mere hunch, and also, as the cases have
9 pointed out, the issue of traffic stops resulting in a
10 further citation, the courts look at whether a reasonable
11 officer standard applies to the initial stop, and then also
12 a consideration of the totality of the circumstances and
13 every case becomes fact specific.

14 And in this case, the facts, of course, are
15 different from any of these others that defense counsel
16 has mentioned, and so I think that we should look to the
17 facts of this case.

18 THE COURT: Well, the Court's going to deny the
19 motion to suppress. I think the officer, in observing the
20 left turn on a red light has probable cause to stop the
21 defendant. It's not quite the same as an officer stopping
22 someone who he observes weaving.

23 I have a lot of cases in this Court of running
24 red lights, I don't get any cases of weaving. It's a--
25 weaving usually is one of the things the officer will

1 consider when he makes a stop, when he thinks a person's
2 driving under the influence. Weaving, within a several
3 block area, he'll count the number of times the officer--
4 or the vehicle driving by the defendant may have left the
5 lane as he weaved from one side of the lane to the other,
6 and if there were any other types of traffic irregularities,
7 but to run a red light is certainly a--not an unusual
8 stop; in fact, we get a lot of red lights.

9 And so once the officer has a reasonable,
10 articulable reasons for making the stop, then he then has
11 the right upon observing or ascertaining the odor of
12 alcohol, to carry on with an investigation, and I find that
13 here, in this case, the officer just did that.

14 I--as I listen to your argument, Mr. Long, the
15 new cases coming down, I don't think they're new at all, I
16 mean they're just--and I don't think it's going in a new
17 direction at all. This State has been, has become, since
18 they have been arresting the people with the drugs going
19 through Central-Southern Utah, both in the Federal Courts
20 and the State Courts, have become more aware of the need for
21 a legitimate probable cause or reasonable, articulable
22 reason for stopping the defendant's car.

23 It doesn't even need to go quite to the--as to the
24 standard of probable cause to make a legitimate and a lawful
25 stop, but you--well, I think the last one I just read from

1 the Supreme Court where the officers followed the guy for
2 some 40 miles, talking to each other, waiting for the
3 defendant to make some type of illegal action so that they
4 could finally stop him, and then finally stopped him
5 because he drove 20 miles in the left fast lane instead of
6 the right slower lane, never exceeding the speed limit,
7 which meant that they were aware of the Supreme Court's
8 decisions, both Federal and State, and they were looking
9 for probable cause to stop this vehicle that had out-of-
10 state license plates. And when the driver didn't give them
11 anything, they arrested him for traveling too slow in the
12 fast lane, and the Court threw it out.

13 I read this case that you're talking about with
14 Judge Harding, and it didn't seem that it opens up a new
15 area at all. Here's a passenger, sitting in a car, not
16 doing anything except moving around in the seat. They
17 didn't say we were worried that he had a gun, that he was
18 going to threaten us or shoot us. The initial stop had been
19 made with the driver for speeding, they could have ticketed
20 the driver, which would have ordinarily occurred, and then
21 it would have gone on its way. And then they approached
22 the passenger side, and I think you said the officer
23 admitted that he used the ruse of just to go open the door.
24 He was just in a fishing expedition, he didn't have any
25 reason to go up there and open that door.

1 And so this whole area has been established a
2 long time ago, this is just a new way of saying it, and so
3 I'm--I don't think we're talking about a new area.

4 The Court's going to find there's probable cause
5 to proceed with this case. Now, I'll deny your motion to
6 suppress.

7 You haven't mentioned the motion to dismiss on
8 anything other than that. I'm not going to rule on your
9 motion to suppress the breathalyzer, or the--based upon
10 the Baker rule, until such time as the testimony is taken
11 at trial, and then we can determine whether or not the
12 standards of the Baker rule have been met.

13 The officer here didn't bring his notes, he said
14 he just thought the stop was what was--and I don't feel
15 that this is the proper time to rule on whether or not--
16 whether the Baker rule has been observed.

17 This Court will note--just let me check here.
18 We'll have to set this for--is there going to be any plea
19 bargain? I think everybody knows about the case, we've
20 had this set for a pretrial hearing before, and then so we
21 continued the pretrial hearing until today for this motion.

22 MS. HENDRICKSON: I would have no objection if
23 defense counsel wished to meet and discuss the potential
24 for discussing the elements of the case as they now stand.

25 THE COURT: Well, let's see, the pretrial hearing

1 is today, our next pretrial hearing will be June 6th, and
2 we'll continue the matter to June the 6th at 2:00 p.m. for
3 pretrial hearing.

4 MS. HENDRICKSON: Thank you, your Honor.

5 THE COURT: Court's in recess for five minutes.

6 (Whereupon, this hearing was concluded.)

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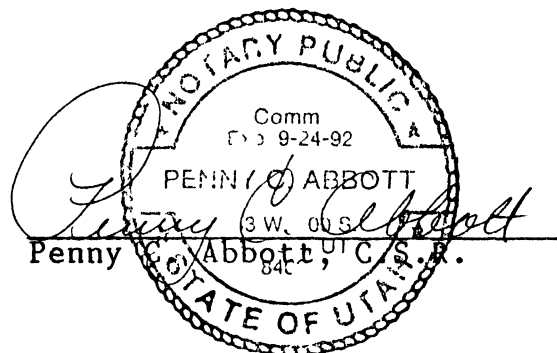
C E R T I F I C A T E

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, PENNY C. ABBOTT, a Certified Shorthand Reporter, do hereby certify that I received the electronically recorded tapes (Nos. 3rd MU 92 and 3rd MU 103) in the matter of Murray City, plaintiff, vs. Thomas L. Huber, defendant, and that I caused them to be transcribed into typewriting, and that a full, true, and correct transcription of said hearing so recorded and transcribed is set forth in the foregoing pages numbered from 1 to 45, inclusive, and that said pages constitute an accurate and complete transcription of all the testimony and proceedings adduced at the hearing and contained on the tapes except where it is indicated that the testimony or proceeding was inaudible.

WITNESS MY HAND and official seal at Salt Lake City, Utah, this 4th day of October, 1989.

My commission expires:
9-24-92



(2) Such exemption shall apply only when the driver of such vehicle, while in motion, sounds audible signal by bell, siren or exhaust whistle as may be reasonably necessary and when the vehicle is equipped with at least one lighted lamp displaying a red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle.

(3) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of others, nor shall such provisions protect the driver from the consequences of an arbitrary exercise of the privileges granted in this section. (Ord. No. 806, § 1.)

Sec. 18-36. Authority of real property owner to regulate traffic on own property. Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as a matter of right from prohibiting such use or from requiring other or different or additional conditions than those specified in this chapter or otherwise regulating such use as may seem best to such owner. (Ord. No. 806, § 1.)

9. For similar state law, see U.C.A. 1953, § 41-6-18.

Article III. Traffic Administration.¹

1. For state law as to powers of local authorities relative to traffic regulations, see U.C.A., 1953, § 41-6-17. As to power of local authorities to place and maintain traffic-control devices, see U.C.A., 1953, § 41-6-22.

Sec. 18-37. Duties of police department generally. It shall be the duty of the police department to enforce the traffic regulations of this city and all of the state vehicle laws applicable to street traffic in this city, to make arrests for traffic violations, to investigate accidents, to develop ways and means to improve traffic conditions and to carry out those duties specifically imposed by the ordinances of this city. (Ord. No. 806, § 1.)

Sec. 18-38. Repealed and not replaced.

Sec. 18-44. Authority to prohibit stopping, standing and parking in hazardous or congested places. The chief of police is hereby authorized to determine and designate by proper signs places in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic. (Ord. No. 806, § 1.)

Article IV. Traffic-Control Devices.²

2. For state law as to traffic signs, signals and markings, see U.C.A., 1953, §§ 41-6-20 to 41-6-28.

Sec. 18-45. Obedience to devices required.³ No driver of a vehicle shall disobey the instruction of any traffic-control device placed in accordance with the provisions of this chapter, unless at the time he is otherwise directed by a police officer or subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter. (Ord. No. 806, § 1.)

3. For similar state law, see U.C.A., 1953, § 41-6-23.

Sec. 18-46. Traffic-control signal legend.⁴ Whenever traffic is controlled by a traffic-control signal exhibiting different colored lights, or color lighted arrows, successively one at a time or in combination only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying a word legend and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) "Green" indication.

(A) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(B) Vehicular traffic facing a green arrow signal shown alone or in combination with other indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(C) Unless otherwise directed by a pedestrian-control signal as provided in section 18-47, pedestrians facing any green signal except when the sole green signal is a turn arrow may proceed across the roadway within any marked or unmarked crosswalk.

(2) Steady "yellow" indication.

(A) Vehicular traffic facing a steady circular yellow or yellow arrow signal is thereby warned that the "red" signal will be exhibited immediately thereafter and such vehicular traffic shall not enter the intersection when the "red" signal is exhibited.

(B) Pedestrians facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian-control signal as provided in section 18-47 are thereby advised that there is insufficient time to cross the roadway, before a red indication is shown and no pedestrians shall then start to cross the roadway.

(3) Steady "red" indication.

(A) Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain standing until an indication to proceed is shown; except as provided in subsection (3) (C) of this section.

(B) Unless otherwise directed by a pedestrian-control signal as provided in section 18-47, pedestrians facing a steady red signal alone shall not enter the roadway.

(C) Except when a sign is in place prohibiting a turn, vehicular traffic facing any steady red signal may cautiously enter the intersection to turn right, or may turn left from a one-way street into a one-way street, after stopping as required by subsection (3) (A) of this section. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(4) If an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the highway pavement indicating where the stop shall be

made; but in the absence of any such sign or marking the stop shall be made at the signal. (Ord. No. 806, § 1.)

4. For similar state law, see U.C.A., 1953, § 41-6-24.

Sec. 18-47. Pedestrian "walk" and "don't walk" signals.⁵ Whenever special pedestrian control signals exhibiting the words "walk," "wait" or "don't walk" are in place and operating, such signals shall indicate and govern pedestrians as follows:

- (1) "Walk." Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

- (2) "Wait" or "don't walk." No pedestrians shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the "walk" signal shall proceed to the nearest sidewalk or safety zone while the "wait" or "don't walk" signal is showing and remain there until the "walk" signal is shown alone. (Ord. No. 806, § 1.)

5. For similar state law, see U.C.A., 1953, § 41-6-25.

Sec. 18-48. Flashing signals.⁶ (a) Whenever an illuminated flashing red or yellow signal is used in a traffic-control device, it shall require obedience by traffic as follows:

- (1) Flashing red (stop signal). When a red lens is illuminated by rapid intermittent flashes, drivers of vehicles shall stop at the stop line when marked or, if none, then before entering the nearest crosswalk whether painted or not, and if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after marking a stop at a stop sign.

- (2) Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

- (3) Pedestrians crossing roadways. Pedestrians facing a flashing red or yellow signal may proceed to cross the roadway in a crosswalk only after ascertaining that it is safe to do so and then only with due caution. Drivers of vehicles shall yield the right-of-way to pedestrians lawfully crossing a roadway at such intersection.

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENTS I-X [BILL OF RIGHTS]
AMENDMENTS XI-XXVI

AMENDMENT I

[Religious and political freedom.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II

[Right to bear arms.]

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT III

[Quartering soldiers.]

No Soldier shall, in time of peace, be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV

[Unreasonable searches and seizures.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

[Criminal actions — Provisions concerning — Due process of law and just compensation clauses.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

[Rights of accused.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be con-

fronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have the Assistance of counsel for his defence

AMENDMENT VII

[Trial by jury in civil cases.]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII

[Bail — Punishment.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

AMENDMENT IX

[Rights retained by people.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

[Powers reserved to states or people.]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XI

[Suits against states — Restriction of judicial power.]

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

AMENDMENT XII

[Election of President and Vice-President.]

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three

on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

AMENDMENT XIII

Section

1. [Slavery prohibited.]
2. [Power to enforce amendment.]

Section 1.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Sec. 2. [Power to enforce amendment.]

Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV

Section

1. [Citizenship — Due process of law — Equal protection.]
2. [Representatives — Power to reduce appointment.]
3. [Disqualification to hold office.]
4. [Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.]
5. [Power to enforce amendment.]

Section 1. [Citizenship — Due process of law — Equal protection.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. [Representatives — Power to reduce appointment.]

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to

vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial Officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. [Disqualification to hold office.]

No person shall be a Senator or Representative in Congress, or Elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Sec. 4. [Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.]

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Sec. 5. [Power to enforce amendment.]

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT XV

Section

1. [Right of citizens to vote — Race or color not to disqualify.]
2. [Power to enforce amendment.]

Section 1. [Right of citizens to vote — Race or color not to disqualify.]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Sec. 2. [Power to enforce amendment.]

The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XVI

[Income tax.]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

(a) persons charged with a capital offense when there is substantial evidence to support the charge; or

(b) persons charged with a felony while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when there is substantial evidence to support the new felony charge; or

(c) persons charged with a crime, as defined by statute, when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to self or any other person or to the community or is likely to flee the jurisdiction of the court if released on bail.

(2) Persons convicted of a crime are bailable pending appeal only as prescribed by law. 1898

Sec. 9. [Excessive bail and fines — Cruel punishments.]

Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor. 1896

Sec. 10. [Trial by jury.]

In capital cases the right of trial by jury shall remain inviolate. In courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors. In courts of inferior jurisdiction a jury shall consist of four jurors. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded. 1896

Sec. 11. [Courts open — Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party. 1896

Sec. 12. [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense. 1896

Sec. 13. [Prosecution by information or indictment — Grand jury.]

Offenses heretofore required to be prosecuted by indictment, shall be prosecuted by information after examination and commitment by a magistrate, unless the examination be waived by the accused with

the consent of the State, or by indictment, with or without such examination and commitment. The formation of the grand jury and the powers and duties thereof shall be as prescribed by the Legislature. 1949

Sec. 14. [Unreasonable searches forbidden — Issuance of warrant.]

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized. 1896

Sec. 15. [Freedom of speech and of the press — Libel.]

No law shall be passed to abridge or restrain the freedom of speech or of the press. In all criminal prosecutions for libel the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. 1896

Sec. 16. [No imprisonment for debt — Exception.]

There shall be no imprisonment for debt except in cases of absconding debtors. 1896

Sec. 17. [Elections to be free — Soldiers voting.]

All elections shall be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers, in time of war, may vote at their post of duty, in or out of the State, under regulations to be prescribed by law. 1896

Sec. 18. [Attainder — Ex post facto laws — Impairing contracts.]

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed. 1896

Sec. 19. [Treason defined — Proof.]

Treason against the State shall consist only in levying war against it, or in adhering to its enemies or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act. 1896

Sec. 20. [Military subordinate to the civil power.]

The military shall be in strict subordination to the civil power, and no soldier in time of peace, shall be quartered in any house without the consent of the owner; nor in time of war except in a manner to be prescribed by law. 1896

Sec. 21. [Slavery forbidden.]

Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within this State. 1896

Sec. 22. [Private property for public use.]

Private property shall not be taken or damaged for public use without just compensation. 1896

Sec. 23. [Irrevocable franchises forbidden.]

No law shall be passed granting irrevocably any franchise, privilege or immunity. 1896